AMERICAN CIVIL LIBERTIES UNION of VERMONT

VERMONT PUBLIC SERVICE BOARD

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#7183

James Volz, Chairman
Vermont Public Service Board
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Dear Mr. Volz:

The American Civil Liberties Union of Vermont, Michael Bandler, Michael Cassidy, Abigail Doolittle, Rick Hege, Barry Kade, Paula Krauss, and Steve Saltonstall file this complaint as a result of recent news reports that Verizon customers' private phone records were disclosed without the customers' knowledge or consent to the National Security Agency. All complainants are Vermont Verizon customers.

Each of the complainants contacted Verizon to complain of the alleged disclosure of these records. Verizon answered the complaints; however, the complainants are not satisfied with Verizon's response.

In 1999, this Board adopted the Consumer Bill of Rights and Consumer Protection Standards to protect telecommunication consumers in a competitive marketplace.[1] The Bill of Rights "represents the principles the Board will apply to implement the statutory responsibilities outlined in 30 V.S.A. § 209, essentially defining what constitutes adequate service."[2] The Board ordered all telecommunications carriers to comply with the Bill of Rights.

Verizon's disclosure of its customers' private phone records to the National Security Agency (NSA) without the customers' knowledge or consent, if true, violates the standard of acceptable services under Vermont law as defined in the Consumer Bill of Rights and Consumer Protection Standards. The Consumer Bill of Rights provides, in part:

> (10) Consumers shall have the right to privacy by controlling the release of information about themselves and their calling patterns and by controlling unreasonable intrusions upon their privacy.[3]

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[1] Investigation into Service Quality Standards, Privacy Protections, and other Consumer Safeguards for Retail Telecommunications Service, Public Service Board, Docket No. 5903, 7/2/99.

[2] Public Service Board, Docket No. 5903, p. 32.

[3] Bill of Rights, Attachment 2, Docket No. 5903.

If Verizon disclosed calling records to the NSA, it did so in violation of this provision of the Consumer Bill of Rights. Customers were not given the opportunity to control the release of their telephone records to the government, and the release, in the absence of a warrant based on probable cause, constitutes an unreasonable intrusion by Verizon upon customers' privacy.

In addition, disclosure by Verizon would also constitute a breach of the Consumer Protection Standards established by the Board. The Consumer Protection Standards require fair marketing practices.[4] Verizon provides assurances to its customers through its Privacy and Customer Security Policies -- specifically its General Privacy Principles 1, 2, 4, 7, and 9[5] -- that it protects consumer safety, informs customers how their information is used, and notifies consumers of changes that may affect their privacy interests. The NSA disclosure would be a breach of these published policies and therefore constitutes an unfair and deceptive act under the Consumer Protection Standards.[6] Similarly, if Verizon implemented a technology change that allowed the NSA direct access to customer records without notifying consumers, it acted in violation of the Consumer Protection Standards provision requiring telecommunications companies to notify customers of changes in technology that may affect the privacy interests of consumers.[7]

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[4] Notice of Services with Privacy Implications: At the time a company files a tariff, or at least 30 days prior to the time a company introduces or modifies a service or implements a technology change that may affect the privacy interests of consumers, the company shall file a statement of foreseeable privacy impacts on customer privacy expectations. The statement shall describe any options the company proposes to make available to customers to address privacy concerns. Consumer Protection Standard 6, Attachment 2, Docket No. 5903, 7/2/99.

[5] See Attached Privacy and Customer Security Policies. In pertinent part, these General Privacy Principles provide:
Principle 1: Verizon obtains and uses individual customer information for business purposes only.
Principle 2: Verizon informs customers how information Verizon obtains about them is used, as well as their options regarding its use.
Principle 4: Verizon enables customers to control how and if Verizon discloses individual information about them to other persons or entities, except as required by law or to protect the safety of customers, employees or property.
Principle 7: We never tamper with, intrude upon or disclose the existence or contents of any communication or transmission, except as required by law or the proper management of our network.
Principle 9: Verizon complies with all applicable privacy laws and regulations wherever Verizon does business.

[6] 5. Fair Marketing Practices: No provider of telecommunications service shall commit an unfair, deceptive, or unconscionable act or practice in connection with a consumer transaction. No provider shall make any offer for services in any public media, including print, television, radio, or promotional literature without stating clearly, conspicuously, and in close proximity to the words stating the offer whether any material exclusions, reservations, limitations, modifications, or conditions and either identifying those exclusions or providing a toll-free contact number by which consumers may learn of the restrictions. Disclosure shall be easily legible to anyone reading the advertising or promotional literature and shall be sufficiently specific to be readily comprehended by the consumer. Unless specifically authorized by the Board, providers may not employ "negative enrollment" in which consumers become enrolled in a service without an affirmative selection by the consumer.

[7] 6. Notice of Services with Privacy Implications: At the time a company files a tariff, or at least 30 days prior to the time a company introduces or modifies a service or implements a technology change that may affect the privacy interests of consumers, the company shall file a statement of foreseeable privacy impacts on customer

We ask that the Board investigate whether Verizon did indeed disclose customer information to the NSA or any other government agency – state or federal – beyond the scope of authorized business purposes. We ask that "disclosure" be defined as the company's having lent or turned over records, or the NSA's having accessed private records held by Verizon. We further ask that "records" be defined to include logs of individuals' or businesses' calls as well as Internet transactions.

We seek the following:

1. That individual notices be mailed by Verizon to any customer whose records were – through direct or indirect actions by Verizon, Verizon subsidiaries, or related companies, including contractors -- disclosed to, turned over to, or accessed by the NSA or any other government agency.

2. That individual notices specify exactly what records were disclosed, the date they were disclosed, the agency (or agencies) to which they were disclosed, the length of time the agency (or agencies) will retain the records, and the agency's (or agencies') policy or policies on further disclosure of the records once received by the third party.

3. That the authority for the disclosure of each record be cited, and the purpose for the disclosure be stated.

4. That any compensation, reimbursement, or other consideration Verizon, Verizon subsidiaries, or related companies, including contractors might have received for any actions regarding the providing of these records – or modifying phone networks to allow government access to records -- be reported to the Board and made part of the public record.

5. That any costs connected with notification be taken from Verizon's shareholder profits and not accepted as a cost of doing business and therefore incorporated into the company's rate base.

6. That the Board determine whether Verizon violated its own stated "Privacy Principles" and that if Verizon did so that the Board penalize Verizon and enjoin Verizon from committing further breaches of the principles.

We also request that the Board seek answers to the following questions:

1. Does Verizon have any knowledge of occasions when customer records may have been obtained by state or federal officials without Verizon's consent?

2. Is it possible for Verizon customer records to be accessed without Verizon's knowledge?

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privacy expectations. The statement shall describe any options the company proposes to make available to customers to address privacy concerns.

3. Has Verizon ever received any assurance from state or federal government officials that undisclosed access to phone records was within the law, despite state or federal statutes to the contrary?

Thank you for your consideration.

Sincerely,

Allen Gilbert
Executive director, American Civil Liberties Union of Vermont

Exhibits: Listed in separate Table of Contents